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DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

[Docket No. SLSDC 2002-11358] - 1

RIN 2135-AA13

Seaway Regulations and Rules: Ballast Water

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System.

DATES: Any party wishing to present views on the proposed amendments may file comments with the Corporation on or before (Insert date 30 days after the date of publication in the FEDERAL REGISTER).

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket

Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, S.W., Washington, D.C. 20590-0001. Written comments may also be submitted electronically at <http://dmses.dot.gov/submit/BlankDSS.asp>. All comments received will be available for examination between 9 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel,
Saint Lawrence Seaway Development Corporation, 400 Seventh Street, S.W.,
Washington, D.C. 20590, (202) 366-6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is proposing to amend the joint regulations to make compliance with applicable Great Lakes shipping industry codes for ballast water management practices a mandatory prerequisite for clearance of a commercial vessel for transit of the Seaway system in support of assuring the continued control of the introduction of aquatic nuisance species (ANS) in the Great Lakes Seaway System. This requirement would go into effect beginning in the 2002 navigation season. This will be in addition to the existing U.S. and Canadian legal ballast water requirements as well as the tremendous amount of undertakings at the international, national, and regional levels by government and the private sector regarding control of ANS. This rule is one more effort in the commitment of many to find a cost-

effective solution that protects the Great Lakes Seaway System from ANS while facilitating commerce.

Specifically, the SLSDC, along with the SLSMC, proposes to amend the Seaway Regulations and Rules in Part 401 of title 33 of the Code of Federal Regulations by adding a new subsection (d) to §401.30, "Adequate ballast and proper trim," which section would be retitled "Ballast water and trim."

This new subsection would require that, to obtain clearance to transit the Seaway, every vessel entering the Seaway must agree to comply with the applicable, existing industry ballast water management practices while operating anywhere within the Great Lakes and the Seaway. This involves two types of vessels and two codes of practice respectively. Every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000.

That code reads as follows:

RECOGNIZING that discharge of ballast water from ships is viewed as a principle vector for the introduction and spread of harmful aquatic organisms and pathogens,

RECOGNIZING the role shipowners and vessel operators can play in minimizing the introduction and spread of non-indigenous organisms and protecting the Great Lakes waters,

CONSIDERING the current status of technology for the treatment of ballast water and the need to develop standards against which to measure efficiency of management procedures;

VESSELS entering into the Great Lakes commit to the

following Code of best Practices For Ballast Water Management.

1. to conduct ballast water management whenever practical and at every opportunity even if the vessel is not bound for a port where such a procedure may be required. This process will ensure that residual ballast on board will, to the greatest extent possible, be subjected to these practices. This process will also aid to minimize sediment accumulations in ballast tanks, and where mid-ocean exchange is practiced, subject fresh-water organisms to an extended exposure to salt water.

Where mid-ocean ballast water exchange is the, or one of the management practices used as required by IMO, USCG, Canadian or other regulations, the safety of the ship shall be a top priority and management shall be practiced according to recognized safe practices.

2. to regular inspection of ballast tanks and removal of sediment, if necessary, to at least the level comparable to that required by the vessel's Classification Society in order to conduct a "close-up" Enhanced Survey, Ballast Tank Structural and Coating Inspection.

3. to ballast water exchange procedures as provided for in US legislation and approved and enforced through United States Coast Guard Regulations.

4. to record keeping and reporting according to United States Coast Guard Regulations (ballast water report forms) - the master to record all uptake and discharge of ballast water in an appropriate log book; Ballast Water Report Forms to be completed and submitted as per Regulations; inspection and cleaning of ballast tanks to be recorded and records to be made available to inspectors upon request.

5. to provide information and logs to authorized inspectors and regulators for the purposes of verifying the vessel's compliance with this Code of Best Practices.

6. to apply a precautionary approach in the uptake of ballast water by minimizing ballasting operations under the following conditions:

a. In areas identified in connection with toxic algal blooms, outbreaks of known populations of harmful aquatic organisms and pathogens, sewage outfalls and dredging activity.

b. In darkness, when bottom dwelling organisms may rise in the water column.

c. In very shallow water.

d. Where a ship's propellers may stir up sediment.

e. In areas with naturally high levels of suspended sediments, e.g. river mouths, and delta

areas, or in locations that have been affected significantly by soil erosion from inland drainage.

f. In areas where harmful aquatic organisms or pathogens are known to occur.

7. to the disposal of accumulated sediments as provided for in the existing IMO Ballast Water Protocols during ocean passages outside International Ballast Water Management Areas or as otherwise approved by Port State Authorities.

8. to foster and support scientific research sampling programs and analysis - Facilitate access to on board sampling and testing of ballast water and sediment including opening of ballast tank covers and safe access to ballast tanks following safety procedures for entering enclosed spaces. Sampling, testing and inspection to be planned and coordinated to fit within vessels' operational programs and minimize any delays.

9. to cooperate and participate in standards development and treatment systems testing and approval processes, including, but not limited to mechanical management and treatment systems, and pesticide management systems as well as improved techniques for ballast water exchange and their scientific assessment.

10. to strive toward global, integrated ballast water management strategies in conformity with internationally agreed principles that respect national and regional aquatic ecosystems.

This Code of Best Practices is endorsed by the undersigned and represents our common goal to attain the highest standards of safe ballast water management to minimize the introduction and spread of aquatic nuisance species in the Great Lakes.

These Federation practices already cover approximately 95% of the commercial oceangoing vessels using the Seaway.

Every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the "Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping" of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001. That code reads as follows:

Owners and operators of vessels that trade within the Great Lakes and the St. Lawrence Waterway and do not go out beyond the Exclusive Economic Zone (EEZ) recognize their role in reducing the risk of transfer of Aquatic Nuisance Species. Introduction of Aquatic Nuisance Species into the Great Lakes has taken place by ships operating outside the EEZ and has caused ecosystem and economic damage. The co-sponsors of this voluntary plan will take management action

to reduce the risk of transferring these species. This plan will apply to U.S and Canadian vessels that operate entirely within the Great Lakes and St. Lawrence Waterway. Design, construction, and structural criteria on some vessels may require consideration and variance from this management practice; however, efforts will be made to comply wherever possible.

For All Vessels Operating Totally Within the Great Lakes and St. Lawrence Waterway System.

None of these practices will be undertaken if the master feels the safety of crew or ship will be compromised

1. Vessel operators will assist in developing programs such as the Duluth-Superior Harbor and Alpena, Michigan Ruffe Voluntary Ballast Management Programs should U.S. Fish and Wildlife Service or an equivalent Canadian authority determine a nuisance species has established niche communities in a specific harbor, providing that these programs will result in substantial prevention of the spread of the species or harmful organism via ballast water.
2. Each vessel will perform annual inspections to assess sediment accumulations. Removal of sediment, if necessary, will be carried out. Records of these actions will be kept onboard the ship.
3. Each company will develop sediment removal

policies and plans.

4. When practical and safe, vessels will take only the minimum amount of ballast required to safely depart the dock and will complete ballasting in deeper water. Records of all ballasting operations will be kept onboard the ship.

5. Cooperation will be provided, as mutually agreed upon, for scientific research into sampling and analysis programs that will not interfere with normal and safe ship operations.

6. Cooperation will be provided, as mutually agreed upon, for developing and testing ballast water treatment systems.

7. Cooperation will be provided toward harmonization of regional ballast water practices.

These rules already cover nearly 100% of the commercial non-oceangoing vessels (lakers) using the Seaway.

The texts of both of these codes would be printed in the "Seaway Handbook," which is distributed to Seaway users by the SLSMC and the SLSDC and is also posted on the joint "Great Lakes St. Lawrence Seaway System Web" site, which can be found at <http://www.greatlakes-seaway.com/en/pdf/handbook.pdf>. If promulgated, the SLSDC and the SLSMC will assess the effectiveness of this regulation after the 2002 Seaway navigation season.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United

States and therefore Executive Order 12866 does not apply. This proposed regulation has also been evaluated under the Department of Transportation's Regulatory Policies and Procedures and the proposed regulation is not considered significant under those procedures and its economic impact is expected to be so minimal that a full economic evaluation is not warranted.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321,et seq.) because it is not a major federal action significantly affecting the quality of human environment. The environmental considerations applicable to the basic substance of this proposed regulation are essentially discussed in the U.S. Coast Guard's Environmental Assessment for its May 17, 1999, "Implementation of the National Invasive Species Act of 1996" rulemaking (64 FR 26672).

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that this proposal does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects

33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR chapter IV as follows:

PART 401 - SEAWAY REGULATIONS AND RULES

Subpart A - [Amended]

1. The authority citation for subpart A of part 401 would continue to read as follows:

Authority: 33 U.S.C. 983(a) and 984(a)(4), as amended; 49 CFR 1.52, unless otherwise noted.

2. §401.30 would be amended by revising the heading and by adding a new paragraph (d) to read as follows:

§401.30 Ballast water and trim.

* * * * *

(d) Beginning in the 2002 navigation season, to obtain clearance to transit the Seaway:

(1) every vessel entering the Seaway after operating beyond the exclusive economic zone must agree to comply with the "Code of Best Practices for Ballast Water Management" of the Shipping Federation of Canada dated September 28, 2000, while operating anywhere within the Great Lakes and the Seaway; and

(2) every other vessel entering the Seaway that operates within the Great Lakes and the Seaway must agree to comply with the "Voluntary Management Practices to Reduce the Transfer of Aquatic Nuisance Species Within the Great Lakes by U.S. and Canadian Domestic Shipping" of the Lake Carriers Association and Canadian Shipowners Association dated January 26, 2001, while operating anywhere within the Great Lakes and the Seaway.

Issued at Washington, D.C. on January 18, 2002

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

Marc C. Owen

A handwritten signature in black ink, appearing to read 'M. Owen', with a long horizontal flourish extending to the right.

Chief Counsel

Billing Code 4910-61-M